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September 14, 2010

Ms. LaDonna Castañuela
Office of the Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087, MC-105
Austin, Texas 78711-3087

VIA E-FILE & REGULAR MAIL

**Re: TCEQ Docket No. 2010-1293-IWD; TPDES Permit No. WQ0004005000;
Reed Lamar Bowers Shrimp Farm's ("Applicant") Reply Brief concerning
the Executive Director's Response to Motion to Overturn**

Dear Ms. Castañuela:

Enclosed please find Applicant's Reply Brief in the above-referenced matter. Please file-stamp the enclosed copy and return to us in the provided self-addressed stamped envelope. Please do not hesitate to contact me should you have any questions.

Very truly yours,



Fred B. Werkenthin, Jr.

FBW/es
Enclosures

APPLICATION BY REED LAMAR	§	BEFORE THE TEXAS
	§	
BOWERS SHRIMP FARM FOR	§	COMMISSION ON
	§	
PERMIT NO. WQ0004005000	§	ENVIRONMENTAL QUALITY

REED LAMAR BOWERS SHRIMP FARM'S REPLY BRIEF

TO THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

COMES NOW Reed Lamar Bowers Shrimp Farm ("Bowers"), and files this Reply to the Executive Director ("ED") and the Office of Public Interest Counsel's ("OPIC") Response to Bowers' Motion to Overturn filed on August 9, 2010 ("MTO"), and would respectfully show as follows:

Reply to the Response of the Executive Director

Bowers has no issue with the response of the Executive Director.

Reply to the Response of the OPIC

Bowers disagrees with the position expressed by the OPIC. Weekly testing proposed in the draft permit is unreasonably expensive. Conducting a rescan of the copper and selenium levels in the discharge proposed by Bowers is a significantly expensive endeavor. The consultant proposing to conduct the retesting has estimated the cost to be \$4,032 to \$6,325. Just absorbing the cost of the test is a significant economic burden for Bowers. Having to absorb this magnitude of cost on a weekly basis would quickly make shrimp farming an uneconomic proposition.

Bowers is not sure that the OPIC understands the difficulty posed to Texas shrimp farms by the requirement to scan metals during permit renewal. The Texas Commission on Environmental Quality's ("TCEQ") application form requires testing for 18 different metals. The application form also requires that each of these metals being tested on four different

occasions, which results in 72 metals tests. (TCEQ often approves an applicant testing less than four times.) The Reed Lamar Bowers shrimp farm was built at a time when wastewater discharge permits were not required for aquaculture facilities and has four separate discharge points. This results in 288 metals tests. Having this many metals tests performed by a commercial analytical lab is a very expensive proposition. Even so, the analytical techniques used by the commercial labs are susceptible to matrix interference because the samples are brackish water. The matrix interference results in random false positive testing results. Using a specialized environmental testing lab such as the one that Bowers is proposing for the retest is way too expensive for a farm (as stated above, the analysis of one sampling for two metals is \$4,032 to \$6,325).

Another circumstance that makes this metals issue very difficult is that there is nothing that Bowers does that causes an increase in the levels of selenium and copper (or other) in the discharge. Any apparent issue with a metal, therefore, is almost certainly due to testing inaccuracies or metals concentrations in the water placed into the facility. This means that in addition to not being able to afford routine testing using accurate procedures, there is nothing that the farm can do to actually lower the concentration of metals in the effluent.

Bowers believes that the levels of copper and selenium reflected in the initial scan were the results of false positives resulting from matrix interference. In general, shrimp are highly sensitive to toxic materials. If toxic levels of metals actually existed in the ponds of the Bowers shrimp farm, it would likely be reflected in the growth and survival of the shrimp. This same issue with matrix interference in metals testing has been experienced by at least three other shrimp farms.

CONCLUSION

Bowers respectfully requests that the TCEQ grant its motion to overturn to enable Bowers to continue to work with the Executive Director to resolve this difficult situation.

Respectfully submitted:



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**ATTORNEYS FOR REED LAMAR BOWERS
SHRIMP FARM**

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the above and foregoing has been sent to all persons on the attached mailing list on this, the 14th day of September, 2010.



Fred B. Werkenthin, Jr.

MAILING LIST
for
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